

BEFORE THE TENNESSEE STATE DEPARTMENT OF EDUCATION

B.J., by and through)	
parents,)	
)	
Plaintiffs,)	NO. 98-39
)	
v.)	A. James Andrews,
)	Administrative Law Judge
METROPOLITAN GOVERNMENT OF)	
NASHVILLE AND DAVIDSON COUNTY,)	
)	
Defendant.)	

FINAL ORDER

A two-day hearing was held in this matter in which numerous witnesses testified and a great deal of documentary evidence was placed in the record. The parties, through their counsel, were afforded an opportunity to submit proposed findings of fact and conclusions of law. Both parties, through their counsel, waived statutory time constraints on obtaining a final order. After considering and weighing the testimony of the witnesses, weighing the evidence, considering the arguments of counsel, the Court finds:

FINDINGS OF FACT

1. B.J. had behavior problems requiring professional health assistance in kindergarten in 1989.Tr/p. 13, L. 11-18.
2. Metro Schools conducted a psychological evaluation in 1990. Exhibit 2.

3. B.J.'s teachers were concerned in 1990 about his frustration level, explosive and unpredictable behavior, and fighting. *Id.*
4. The 1990 evaluation found B.J. did not have a handicapping condition but would need close monitoring.
5. His school work in the 4th and 5th grade was satisfactory. Tr./p.24-25, L. 24-25, 1-2.
6. B.J. was treated by Dr. Frederick T. Horton, Jr., M.D. P.C. for depression from April 1994 through May 1996. Exhibit 3.
7. From 1994 through 1996, B.J. exhibited anger and improper behavior in the home but not at school. Tr./p.31-32. L. 25, 1-4.
8. B.J.'s had excellent grades in the sixth grade. Exhibit 5.
9. B.J.'s final grades in seventh grade, at Bellevue Middle School, were all A's and B's with the exception of one C in Language Arts. Exhibit 4.
10. In the fall of 1997, B.J. was selected, in part, because of exemplary behavior for a small team. Tr./p. 235, L. 11-25.
11. The core curriculum teachers for this small team were Ms. Connie Gabriel and Mr. Monty Wilson. *Id.*
12. B.J.'s parents met with his teachers on September 23, 1997 but did not discuss B.J.'s prior treatment by psychiatrist. Tr./p.46-47, L.12-14, 23-24.
13. By October 13, 1997, B.J. had begun disrupting other students' education. Collective Exhibit 7, Office Referral dated October 13, 1997.
14. On October 14, 1997, B.J.'s parents met with his home base teacher, Ms. Gabriel, and requested an S-Team meeting for an assessment of B.J. (Exhibit 6).
15. During the October 14, 1997, meeting the parents told his teachers of B.J.'s prior psychological problems. Tr./p.51,

L. 24-25 and p. 52, L.1.

16. The October 13, 1997, Office Referral for B.J. contains the notation, "refer to S-Team." Collective Exhibit 7, Office Referral dated October 13, 1997.
17. By October 13, 1997, B.J. had received frequent suspensions and there was a concern that there was a psychological problem. Tr./p. 37, L. 8-12; Collective Exhibit 7, Office Referrals dated September 15, 1997, through October 13, 1997.
18. B.J.'s parents received notices of disciplinary action and received calls from and met with his teachers about his problems in school. Tr./p.36, L. 14-17.
19. In an attempt to address his behavior problems in school, B.J. was transferred to Monty Wilson's home base. Tr./p.70, L. 19-24.
20. B.J. also became disruptive at home after school began. He rebelled at the limitations and constraints his parents placed on him and physically acted out at home by throwing things and turning over furniture. At times his parents had to physically restrain him. Tr./p.81, L. 16-25.
21. B.J. bit and slapped his father. Tr./p. 88, L. 18-24.
22. On President's Day, 1998, B.J. hit his father hard enough to give him a black eye. Tr./p.89, L. 8-17.
23. In the Fall of 1997, B.J.'s grades dropped dramatically and by the time he was taken out of Bellevue Middle School he only had a satisfactory grade in one subject. Exhibits 8 and 27.
24. An S-Team meeting was convened on February 23, 1998, and B.J.'s parents received a booklet explaining at least some of their rights. Tr./p. 96, L. 10-18.
25. B.J.'s parents, Laura Snyder, Connie Gabriel, Ted Dansby, and Deborah Whitman attended the S-Team meeting which was convened to consider the parents' request that B.J. be evaluated. Tr./p.99, L. 6-20.

26. B.J.'s behavior problems escalated both at home and at school during the 1997-98 school year. In September, 1997, B.J. was suspended from school for three days. By October 13, 1997, his teachers reported him openly defiant, disrespectful, and a constant class disruption. In November, 1997, he was suspended from school for three days for damaging a teacher's purse. In January, 1998, he was suspended for fighting. In February, 1998, he destroyed art supplies. In March, 1998, he was kicking doors and desks and hitting walls with his fists. On March 31, 1998, B.J. threw a dictionary into another student's chest. Collective Exhibit 7.
27. In November, 1997, as the behavior problems escalated, B.J.'s parents met with the principal of Bellevue Middle School, Mr. Bob Wilson. Tr./p.367, L. 25., p. 368, L. 1-2.
28. During this November, 1997 meeting, the parents asked Mr. Wilson about the testing requested in October, 1997. Mr. Wilson acknowledged that the request for testing was in [REDACTED]'s file, but advised the parents that he did not believe [REDACTED] had any kind of disability because his past grades were so good. Tr./p. 369, L. 11-16.
29. The S-team meeting requested by the parents in October, 1997, was not held until February 23, 1998, whereupon the S-Team referred B.J. for evaluation. Exhibit 22.
30. During the April 23, 1998 M-Team, the IEP was discussed, as well as the results of the psychological examination. B.J.'s father also offered the recommendation of B.J.'s psychiatrist, Dr. Horton. Tr./p.106-107, L. 21-25, 1-2.
31. None of B.J.'s teachers were present at the M-team meeting. Transcript, p. 499, L. 14-22.
32. B.J.'s parents had already decided before the M-Team meeting to send him to Three Springs. Tr./p. 109, L. 11-13.
33. Even though B.J.'s teachers could not attend the M-Team, his parents did not want to wait any longer to schedule another M-Team. Tr./p. 115, L. 16-23.
34. Betty Goldsweig chaired the M-team meeting and testified that she usually hands out a supplement explaining the

notification requirements before parents can place their children in a private educational facility. Tr./p. 496, L. 3-5, L.14-15.

35. B.J.'s father testified that the parents did not receive the 1997 amendment supplement to the rights book until mediation in August, 1998. Tr./p. 92, L. 2-4.
36. The psychological evaluation of B.J. prepared by Metro Schools was discussed at the M-team meeting and Ms. Goldsweig testified the psychological was a pretty serious evaluation. Tr./p. 501, L. 1-7.
37. The psychological evaluation was conducted by Ted Dansby, a psychology intern with the Division of Psychology for Metro Schools. Mr. Dansby recommended that the "volatility of [REDACTED]'s outbursts and his particular disregard for authority should be considered in placement decisions." Exhibit 12.
38. At the M-Team meeting, Ms. Goldsweig had a letter from Dr. Horton recommending Three Springs Wilderness, a residential program, for B.J. Tr./p. 504, L. 1-10.
39. At the M-team meeting, B.J.'s father informed Metro that he was going to ask for reimbursement for residential placement. Tr./p. 504, L. 15-21.
40. Ms. Goldsweig does not remember discussing with the parents "how they would go about preserving their right to be reimbursed if they put him in Three Springs." Tr./p. 504, L. 15-25; p. 505, L.1).
41. B.J.'s parents were justified in believing that decisive intervention was needed. For example, B.J. had assaulted his father, stolen his sister's car, assaulted his sister, committed violent acts at school and on one occasion had tried to find his father's shotgun. Tr./p. 289-390. Also, in April, 1998, B.J. told his mother that if he had a baseball bat or a gun that he would kill the father of one of his friends. (Tr./p. 391, L. 2-10.
42. Terry Adams, with the Genesis Program, testified that he advised B.J.'s father that residential treatment seemed warranted for B.J. Tr./p. 561, L. 9-14.

43. Ms. Gabriel called B.J.'s mother to reschedule the M-Team meeting because a field trip had already been scheduled for that day. She was told the parents wanted to go ahead and have the meeting without the teachers. Tr./p.420-421, L. 16-25, 1-4.
44. The long delay in convening an S-Team was caused in large part because B.J.'s home base teacher mis-perceived her authority to convene an S-Team and misunderstood the criteria for receiving special services. Tr./p. 435-436.

CONCLUSIONS OF LAW

The Individuals with Disabilities Education Act (IDEA) requires the defendant (Metro) to provide eligible children with a free appropriate public education consisting of special education and related services. *Tennessee Sept. of Mental Health v. Paul B.*, 88 F.3d 1466, 1471 (6th Cir. 1996). The plaintiff, B.J. is a handicapped or disabled child within the meaning of IDEA and, had he been properly evaluated in the Fall of 1997, he would have been found to have been eligible for services under IDEA at that time.

A free appropriate public education, in addition to requiring specially designed education for eligible children, expressly requires the provision of such supportive services as may be required to enable eligible children to benefit from special education. Related services may include private special education for a child if a court determines that such a placement, rather than the proposed IEP, is proper under the Act. *School Committee*

of Town of Burlington, Mass., et al v. Department of Education of Mass., 471 U.S. 359, 369, 105 S.Ct. 1996, 1002, 85 L.Ed.2d 385 (1985). The Supreme Court has held that a school district may be required to reimburse parents for the costs of private education and related services in appropriate cases. *Id.*

Metro is responsible for evaluating a child suspected of having a disability and in need of special education and related services. 20 U.S.C.A. Section 1412(a)(3) (1997). If parents request an evaluation, Metro must conduct it without delay if it suspects that the child has a disability and needs special education and related services. *Letter to Anonymous*, 21 IDELR 998 (OSEP 1994).

In this case, Metro clearly dropped the ball. B.J.'s parents' request for an S-Team in October, 1997, should have triggered an expeditious process to address B.J.'s escalating and ever more alarming behavior problems. Instead, Metro ignored its statutory responsibilities for most of the school year.

Metro cannot claim that it had an incomplete picture of B.J.'s problems when, had it promptly initiated the S-Team/M-Team process in October, 1997, it would have undoubtedly learned more about B.J.'s psychological history and would have been able to intervene before the behavior had become so violent and uncontrollable as to

necessitate residential placement.

The Individual with Disabilities Act (IDEA) dictates that public school districts have in place a policy that provides disabled children with a free appropriate public education (FAPE). 20 U.S.C § 1412(2) (B). The term FAPE means special education and related services. *Neely ex Rel. Neely v. Rutherford County Schools*, 851 F.Supp. 888 (M.D. Tenn. 1994). Where placement in a residential facility is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, is at no cost to the parent of the child. *Tennessee Department of Mental Health and Mental Retardation v. Paul B.*, 88 F.3d 1466, 1471 (6th Cir.1996); accord, *School Committee of Town of Burlington, Mass., et al v. Department of Education of Mass.*, supra.

The FAPE is implemented through a written individualized educational program (IEP) that sets out an educational program to meet the unique needs of the child with disabilities. 20 U.S.C § 1301(a)(20). The IEP is to be developed by an M-Team which includes at least one of the child's regular teachers. 20 U.S.C. § 1414(d)(1)(B).

In this case, there was no regular teacher present when the M-Team met. This defect, however, was harmless. The result,

undoubtedly, would have been the same, a disagreement over the necessity for a residential placement. The presence or absence of the regular teachers would not have resolved this dispute.

What is clearly obvious from the evidence and from the candid testimony of Metro personnel, is that, had Metro acted in a timely fashion to address B.J.'s needs, Metro would have had an opportunity to test the adequacy of its proposed solution. Because Metro ignored its duty to convene an S-Team/M-Team, B.J.'s behavior was allowed to deteriorate to the point where he had become a danger to those around him, whether in school or at home.

Parents dissatisfied with a proposed IEP may enroll the child in a private school and then seek reimbursement if the school district has failed to meet its IDEA obligations. The IDEA allows reimbursement if the school district has failed to meet its obligation to offer a free appropriate public education under the IDEA. *School Committee of Town of Burlington, Mass., et al, supra.*

Metro's inordinate delay in initiating the S-Team/M-Team process and the fact that B.J.'s behavior worsened dramatically during that time, denied B.J. his right to FAPE. *Board of Education, Etc. v. Rowley*, 458 U.S. 176, 201, 102 S.Ct. 3034, 3048, 73 L.Ed.2d 690 (1985). The basic floor of opportunity provided by the Act consists of specialized instruction and related services

designed to provide educational benefit to the eligible child. *Id.*

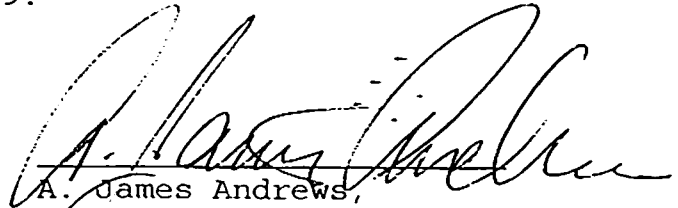
The parties agree that the parents did not afford Metro the statutory grace period before enrolling B.J. in Three Springs. They disagree, however, as to whether or not Metro met its obligation to inform them of this requirement. B.J.'s father is the only witness with a clear memory of the written material handed out at the M-Team and he testified that the supplement addressing this issue was not provided to him or his wife. It is also persuasive that no one remembers a specific discussion of the grace period during the M-Team meeting. Accordingly, the evidence supports a finding that the parents were never given the supplement and were never told of the required waiting period. Accordingly, their decision to enroll B.J. in Three Springs immediately after the M-Team meeting does not bar reimbursement.

Metro has objected to what it perceives as a lack of educational courses in the Three Springs curriculum. The point is well taken and, although the record supports a finding that B.J. received educational benefit at Three Springs, it is clear that not every activity was designed with education in mind. Furthermore, B.J.'s mother testified that the parents were not seeking full reimbursement.

It is, therefore, appropriate that B.J.'s parents be

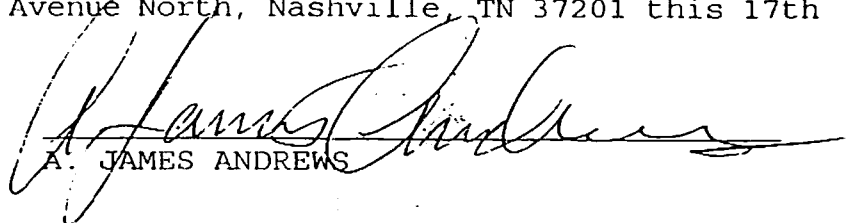
reimbursed for fifty percent of the tuition, room and board, and other costs associated with B.J.'s placement in Three Springs. B.J. and his parents are the prevailing parties in this matter.

Entered this 17th day of June, 1999.


A. James Andrews,
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Final Order has been mailed, with sufficient postage affixed thereto, to the Division of Special Education, Tennessee State Department of Education, 8th Floor, Gateway Plaza, 710 James Robertson Parkway, Nashville, Tennessee 37243-0380; Attorney Mary Johnston 204 Metro Courthouse, Nashville, TN 37201 and Attorney Evalina Cheadle, 129 2nd Avenue North, Nashville, TN 37201 this 17th day of June, 1999.


A. JAMES ANDREWS